LEGAL PROBLEMS ON EMPLOYER PROTECTION UNDER THE LABOUR PROTECTION ACT B.E. 2541:
A Case Study of Employee Leave

SURASAK MEEBUA

Law Department Faculty of Humanities and Social Sciences, Suan Sunandha Rajabhat University, Thailand
E-mail: surasak.mee@ssru.ac.th

Abstract - The Labor Protection Act B.E. 2541 provides protection for employees in various fields. One of the important points is that employees can take sick leave as long as they are actually sick. The purpose of this research is 1. To study the concept of sick leave of employees under the Labor Protection Act B.E. 2541 and 2. To synthesize legal measures to protect employers in case of sick leave for a long time by using the qualitative research methodology, and the data is collected from the relevant documentary research. The study indicated that the Act requires employees to take sick leave as long as they are actually sick, and the employer shall pay wages to sick employees on sick days equal to the wage rates on working days throughout the leave period. However, it must not exceed 30 working days per annum as it could affect the employer or cause damages to the employer. If employees in the workplaces take sick leave for a long period of time and many employees take several leave at the same time. From the study, there should be measures in various field for protecting the employer in the event that the employee takes a sick leave for a long time to help enabling employers to continue their businesses.

Keywords - Sick leave, Labour Protection Act B.E. 2541, employee, employer

I. INTRODUCTION

Employees are important to the employer as the business driver of the employer aside from funds, raw materials, and management (Wiwan Tharahiranchot, 2014, Website) in which both employees and employers are obliged to treat each other and have the right to be treated in return. The employee is obliged to work for the employer and is entitled to receive wages in return for work; one the other hand, the employer is obliged to pay remuneration to the employees and receive benefits from the work performed by the employees (Supasit Thaweechamsup, 2018, pages 1-51) However, with the differences between the statuses of employees and employers, the employer has the authority to control and supervise the employees to perform their works in accordance with the purpose of the job. At the same time, employees are obliged to obey orders and strictly comply with them. In addition, some employers still rely on their authority to take advantage, bullying and oppressing employees by various means. The term "employer" under Section 5 of the Labor Protection Act B.E. 2541 means a person who agrees to accept an employee for work by paying wages, and the meaning includes (1) the person who has been assigned to work on behalf of the employer, and (2) in the case that the employer is a juristic person, this includes the person authorized to act on behalf of the juristic person and the person assigned from the authority to act on behalf of a juristic person. Until later, there are enactment and enforcement of the Labor Protection Act B.E. 2541 that are effective on 19th August, 1998, and the latest amendment to the Labor Protection Act (No. 7) B.E. 2562, in order to provide protection to employees in many areas, whether the scope of enforcement, general protection, the use of labor, female labor usage, child labor usage, wages, overtime payment, holiday payment, and overtime pay on holidays, days and working hours, workplace, holidays, sick leave, safety, occupational health and environment, work suspension, termination, compensation, the Employee welfare fund, and legal penalties for employers who violate the rules.

For the leave of absence, according to this Act, it is determined that the employees can take 6 types of leave of absence, which are sick leave, leave for sterilization, maternity leave, personal business leave, leave for military services, and leave for training or developing knowledge. The sick leave of the employee is stipulated in Section 32 that the employee is entitled to sick leave as long as the actual sickness does not appear as a quota for 30 days of sick leave per annum, which means, if the employees got sick and took sick leaves for 15 days, so they cannot use another 15 days for the sick leave as the employees who are able to take sick leave must be sick first (Phongrat Khrua-klin, 2018, p. 227), but it has the objective to protect sick employees who are unable to work for the employees to stop working and return to normal condition without being punished as absence from work or abandonment of duties (Kasemsan Wilawan, 2019, Nor. 88). In Section 57, the employer shall pay wages to an employee on sick leave under Section 32, and it must be equaled to the wage rate on a working day throughout the leave period, but it shall not exceed 30 working days per annum, so the sick employees can receive their wages as incomes during taking leave (Kasemsan Wilawan, 2019, p. 88). The term "wage" according to Article 5 of the Labor Protection Act B.E. 2541 means the money that employers and employees agree to pay as

remuneration for work under the contract for normal working hours on an hourly, daily, weekly basis, monthly or other period of time, or paid by calculated from the works done in the normal working hours on the working days, and it shall include the money that an employer pays to an employee on holidays and days off that the employee does not work. However, the employees are entitled to receive wages according to this Act. Thus, if an employee takes sick leave for more than 30 days, then there is no right to receive wages on a leave which exceeds 30 days only (Phongrat Khrue-klin, 2018, p. 231). Sick leave here does not include the date that the employee does not work due to the accident or illness arising from work. If an employee is exposed to accident or illness arising out of work, they are covered by the Workmen's Compensation Act B.E. 2537 (1994) and does not include maternity leave as the law requires that a female employee shall take a leave for maternity for not exceeding 98 days under Section 41with the right to receive wages on maternity leave equal to wages on a working day throughout the leave period, but it shall not exceed 45 days under section 59. Additionally, they have the right to receive a maternity leave for no more than 2 times, which is a payment of 50 percent of the wage under section 57 for 90 days under the Social Security Act B.E. 2533, according to Article 67, and it is including the wages that the employee is entitled to receive for 90 days for the first pregnancy and the second pregnancy.

Later, when considering the term "sick", the law did not specifically define how severe the symptoms must be. Therefore, only the employees had physical or mental disorders, even minor or even severe illness, resulting in the inability to work for the employer as usual, would all be described as sick. The employer does not have the right to exercise discretion to allow or not allow the employees to have sick leave (Papasri Buasawan, 2018, p. 89-90).The employees have the right to take sick leave as long as they actually get sick until they return to normal or finally death (Kasemsan Wilawan, 2019, p. 88) Although the law does not specify sick leave directly, the person who defined the definition, such as Pornthep Thawikan, indicated that "sick leave" is the case where the employee is unable to work for the employer due to physical or mental pathologies causing obstacles to work, such as having high fever, resulting from climate change or stomach ache from eating food or having various accidents when they work for an employer, and they need to take a rest at home or hospital (Pornthep Thawikan, 2012, Website). In addition, according to the Royal Institute 2011, the definition of "sick" means to feel sick because of disease or fever or other reasons that cause you to feel like that (Office of the Royal Institute, Website), where all employees who agree to work for an employer with a pay regardless of the name, will have sick leave as required by law, regardless of whether they are temporary employees, permanent employees, contract employees, special contract employees, part-time employees, and employees who have a fixed employment period (both short-term and long-term) as well as employees working at home, skilled employees or any employees as specified in the definition of Article 5 (Phongrat Khrua-klin, 2018, p. 227) without direct employer penalties. In the event that the employer does not allow the employee to take sick leave even if the employee is really sick, and in the case of the employer giving the sick leave but there is disciplinary punishment by cutting wages or deducting wages during the sick leave, only sick employees have the right to prosecute the case to claim for a wage that the employer has deducted without paying by law. The court will decide whether an employee is sick and has the right to take sick leave under the said section or not (Kasemsan Wilawan, 2019, Nor. 89). Also, the law stipulated penalties for employers who do not pay wages to employees on sick leaves according to Section 32 in accordance with the amount stated in Section 57, paragraph 1 to be liable to a penalty fine for not exceeding 20,000 baht under Section 146.

However, when considering Section 32 which provided that employees have the right to get the sick leave as long as they are actually sick, it may affect the employer in many ways, especially in cases where the employee takes sick leave for a long period of time until death or return to a healthy condition and able to work with employers. Although the employer is obliged to pay wages during the leave for only 30 days, in the case that the employee's sick leave for a long time, the employer must lack the manpower to work for them and employees can also reimburse medical expenses and use various benefits provided by the employer fully even such the illness of the employees is due to the health of the employees themselves, not from working or experiencing dangerous at work. In addition, if the employer terminated the employment because of the sick leave, the employer is obliged to pay compensation according to the length of work and the final wage before being terminated. Currently, the rate is set as 6 types. This will affect employers who have to bear the costs incurred to them. Therefore, it is expedient to amend the provisions on sick leave to be better than this to provide fairness to the employer and protect the employer more than before.

II. OBJECTIVES OF STUDY

1. To study the concept of sick leave of employees under the Labor Protection Act B.E. 2541.
2. To synthesize legal measures to protect employers in case of long-term sick leave.

III. SCOPE OF STUDY

This research aimed to study legal provisions relating to sick leave of employees under the Labor Protection

Act B.E. 2541 to lead to a synthesis of measures to protect employers to be fair and more protected

IV. METHODOLOGY AND DATA ANALYSIS

This study uses the Qualitative Research methodology by collecting data from various documents such as textbooks, research reports, legal journals (Pawita Kakhai, 2017), articles, electronic data, and relevant laws of Thailand and other countries in order to analyze legal measures to protect employers in case of long-term sick leave under the Labor Protection Act B.E. 2541 to be appropriate in the future.

V. EXPECTED BENEFITS

1. To acknowledge the concept of sick leave for employees in accordance with the laws of Thailand, comparing to foreign laws.
2. To synthesize legal measures to protect employers in case of long-term sick leave.

VI. RESULTS AND DISCUSSION

As mentioned above, it can be seen that the law requires employees to take sick leave as much as it actually is. Only for the sick leave from 3 days up that the employer may require the employee to submit a first class medical certificate or a government medical facility. In the case that an employee is unable to present a certificate of first class modern medicine or a government medical facility, such as a health center certificate, Public Health Service Center Certificate, or Health Care Certificate, the certified person may be just an authorized official at a government hospital (Certificate of private or government official) to employees to explain to employers only (Kasemsan Wilawan, 2019, page 89). For employees who take sick leave lesser than 3 days or more, the employee can receive wages during that sick leave without handling a medical certificate to the employer. If the employer stipulated in the work regulations that if the employee takes sick leave even less than 3 days, they must present medical certificates to get wages for those sick-leave days, such rules and regulations would not be accepted as it is contrary to the Labor Protection Act B.E. 2541 (Papasri Buasawan, 2018, page 90).

The reason that the law prescribed as such is because the health problems of employees are difficult to predict or to specify the recovered date from illness. Even if the employer pays wages for the entire period of the sick leave of employees that is not more than 30 days according to no work no pay principle, the law does not specify the numbers of sick-leave days for employees and this does not specify measures to help employers in any way. If it appears that in the workplace of any employer that has an employee on sick leave together at the same time or the employees have chronic illnesses or diseases that need to be treated for a long time or need ongoing treatment, such as tuberculosis, heart disease, diabetes or cancer, it inevitably affects employers in many respects, especially the problems on the human resource management of employer businesses. There are no measures to protect the employer in any way. If considering the impact that will occur on the employer in the event that the employee has been getting sick for a long time, it is divided into 3 points consisting of causing the employer to not have any employees to work during that time, and it is resulting in the need to hire more employees or recruit more employees to replace the number of workers who are sick in order to continue the business, and this causes the employer to pay more wages. Later, if considering the labor contract that the law requires the employer to pay wages for the entire period that the employee works as the employees are important in driving the business of the employer, but when considering the issue of long-term sick leave, the employer is still obligated to pay wages to that employee even if he didn't work in return during that time. This affects the employer a lot, especially on that more employers start to run businesses that have capital constraints and personnel. Secondly, when employees are on sick leave for a long time and still being employees of the employer, they have the right to take sick leave and use the welfare of the employer during treatment, such as reimbursement of medical expenses or various welfare reimbursements (Kasemsan Wilawan, 2019, page 89). Thirdly, if the employer does not allow employees to be on sick leave for a long time and does not pay wages during that sick leave, it is considered to be an employment termination under Section 118, paragraph 2, so the employer shall be obligated to pay for the compensation to that employee under the working duration and the final wage before the employment contract is terminated. All of these have a profound impact on employers.

VII. CONCLUSION

From the study results and the above discussion, the author then sets guidelines for employer protection in case of long-term sick leave, divided into 2 measures which are

1. Legal measures. For the legal measures, the author considered that the Labor Protection Act B.E 541, Section 32 should be amended to be clearer in the protection of employers by specifying the number of days the employee can take sick leave per annum. The determination on the numbers of sick leave should be considered from both the necessity and the impact that both the employer and the employee must received. On the other hand, for the wage during the sick leave, the employee has the right to receive during the leave for 30 days per annum in accordance with

Section 57, Paragraph 1, to motivate the employees to maintain their health, so frequent sick leave or long leave for treatment shall not be occurred. In addition, the government should provide some assistance, such as tax measures for employers whose employees leave the sick place for a long time and many sick leave in that establishment. Thus, it is available for the employer to receive appropriate remedy.

2. Social measures. In addition to the legal measures mentioned above, the author considered that social measures should be set together with them, and the employer should promote the exercise to the employees at work after work or on holidays, places, exercise equipment or other necessary things to provide convenience to employees and motivate employees to exercise more, especially in Thailand as it is now entering into the Aged Society due to the population aged 60 years or more at present is calculated as 17.1 percent, and in 2021 it shall step into the Completely Aged Society. In the next 20 years, it is expected that Thailand will have the proportion of the elderly about 1 in 3 of the whole population and it is entering into the Super-Aged Society (Office of Research and Human Resources Development, Office of the Civil Service Commission, Website). The term "elderly" under Section 3 of the Elderly Act B.E. 2546 means a person who is over sixty years of age and older and has Thai nationality. Employers need to hire older employees, as it can be seen in some establishments that are accepting more elderly people to work to replace the labor shortage. This will be a relief from tension in the work and create a working atmosphere, including relationships between colleagues to be closer, for employees to have good physical health to reduce the problem of sickness and sick leave for the employer in the future. Additionally, the promotion of employee health checks should be more to recognize the health problems of each employee and give advice on health care, including taking care of nutrition of employees.

ACKNOWLEDGMENT

The author would like to express sincere thanks to Suan Sunandha Rajabhat University for kindness and support to this paper.

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